

ORDINANCE NO. 28206

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 1 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 1.20 TO ESTABLISH UNIFORM REQUIREMENTS AND PROCEDURES APPLICABLE TO THE PRESENTATION AND PROCESSING OF CLAIMS FOR MONEY OR DAMAGES WITH THE CITY OF SAN JOSE, WHERE THE CLAIM IS EXCEPTED FROM THE FILING REQUIREMENTS OF THE CALIFORNIA GOVERNMENT CLAIMS ACT AND THERE ARE NO OTHER APPLICABLE REQUIREMENTS OR PROCEDURES FOR THE FILING OF SUCH CLAIM, TO REQUIRE THE FILING OF A CLAIM AS A PREREQUISITE TO FILING SUIT AGAINST THE CITY, AND TO ESTABLISH A TRANSITION PERIOD FOR THE PRESENTATION OF CLAIMS THAT WOULD BE UNTIMELY UNDER THE NEW PROCEDURES AND REQUIREMENTS

WHEREAS, pursuant to Section 935 of the California Government Code, this Council wishes to enact uniform procedures applicable to the presentation and processing of claims excepted under California Government Code Section 905 from the claims filing requirements of Chapter 1 and Chapter 2 of Division 3.6 of Title 1 of the California Government Code and for which no other procedures are set forth in State law or this Code; and

WHEREAS, uniform procedures for the presentation and processing of claims provide the City with the opportunity to investigate the facts of such claims while the evidence is fresh, allow for the settlement of meritorious claims without the need for costly litigation, and permit the City to make appropriate fiscal planning decisions; and

WHEREAS, except as expressly specified to the contrary in Section 3 of this Ordinance, it is the Council's intent that this Ordinance apply retroactively in order to preserve the City's ability to engage in sound fiscal planning;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 1 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 1.20
CLAIMS PROCEDURES
Part 1
Authority and Application

1.20.010 Authority

This Chapter is enacted pursuant to Section 935 of the California Government Code.

1.20.020 Application

- A. Except as set forth in Subsection B, the provisions of this Chapter shall apply to all claims for money or damages against the City which are excepted under California Government Code Section 905 from the claims filing requirements of Chapter 1 and Chapter 2 of Division 3.6 of Title 1 of the California Government Code, and which are not governed by any other State statutes or regulations expressly relating thereto. Such claims are referred to in this Chapter as “Covered Claims.”
- B. Covered Claims shall exclude the following:
1. Claims governed by other provisions of this Code which expressly provide for the filing of a claim as a prerequisite for filing suit against the City for money or damages.
 2. Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

3. Applications or claims for money or benefits under any public retirement or pension system.

1.20.030 Construction

Nothing contained herein is intended to extend any statute of limitations or claims filing period provided under other provisions of this Code, State law, or any other applicable law or regulation related to filing a judicial action or other proceeding for recovery of money or damages against the City. References in this Chapter to specific sections of the California Government Code shall refer to those provisions as they now exist or shall hereafter be amended.

1.20.040 Time Barred Claims

Nothing in this Chapter revives or reinstates any claim or cause of action that, on the effective date of this Chapter, is barred by failure to comply with any previously applicable statute, ordinance or regulation requiring the presentation of a claim prior to suit, or by failure to commence any action within the period prescribed by an applicable statute of limitations.

Part 2

Presentation and Processing of Covered Claims

1.20.200 Claims Required

Except as modified by this Chapter all Covered Claims against the City for money or damages shall be presented to the City within the time and in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms.

1.20.210 Form of Claim

All Covered Claims shall be made in writing and verified by the claimant or by his or her

guardian, conservator, executor or administrator. Any Covered Claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by his or her guardian, conservator, executor or administrator. In addition, all Covered Claims shall contain the information required by California Government Code Section 910.

1.20.220 City Action on Claims

Covered Claims shall be acted upon by the City within the time and, except as modified by this Chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms.

1.20.230 Claim Prerequisite to Suit

In accordance with California Government Code Sections 935(b) and 945.6, no action against the City may be maintained by a person who has not complied with applicable claims presentation requirements.

1.20.240 Suit

Any action brought against the City upon any Covered Claim shall conform to the requirements of Section 940 through and including Section 949 of the California Government Code. Any action brought against any employee of the City upon any Covered Claim or demand shall conform to the requirements of Section 950 through and including Section 951 of the California Government Code.

SECTION 2. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this

Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 3. This Ordinance shall take effect at the expiration of thirty days after adoption as provided by San José City Charter Section 605, and except as expressly set forth in the following sentence, shall apply retroactively. Any Covered Claim that would have been timely if presented in accordance with any claims period in effect (the “Prior Claims Period”) prior to the effective date of this Ordinance may, notwithstanding this Ordinance, be presented by the sooner of the date on which the Prior Claims Period would have expired or on March 3, 2008.

PASSED FOR PUBLICATION of title this 11th day of December, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: CONSTANT

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk